IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2869 OF 2024

Nitin Jayprakash Bakal ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Manoj Mohite, Senior Advocate a/w. Ms. Ilsa Shaikh i/b. Mr. Dhananjay Bhosale, for the Applicant.
Mr. H.S. Shinde a/w. Mr. M.A. Inamdar, for Respondent No. 2.
Mr.A.A. Naik, APP, for the Respondent/State.
Mr. K.P. Nade, PSI, Vashi police station.

CORAM : N. J. JAMADAR, J.
DATE : AUGUST 14, 2024

P.C.:

1. Heard the learned counsel for the parties.

2. The applicant who is arraigned in C.R. No. 945 of 2023 registered with Barshi police station for the offences punishable under sections 420 and 409 of Indian Penal Code, 1860 seeks to be enlarged on bail.

3. The applicant is a Tax Consultant and Tax Practitioner. The first informant deals in the business of electrical goods and cables under the name and style of “Tara Electricals”. Since 10 years prior to the occurrence, the first informant had been availing the professional services of the applicant and thereby the first informant reposed trust in the applicant.

4. During the period 13th November, 2018 to 15th November, 2018, a search was conducted by VAT investigation team at the

premises of the first informant. The team had seized the account books and record maintained by the first informant.

5. The first informant alleges towards payment of the tax due and penalty thereon, the applicant had initially obtained cheques drawn on various banks aggregating to a sum of Rs.1 Crore. Later on, the applicant returned those cheques on the pretext that the tax was required to be paid in cash. Thereupon, the first informant delivered cash amount of Rs.30,00,000/- on 17th November, 2018.

6. The first informant further alleged that the applicant claimed that towards due tax and penalty, the first informant was required to pay a sum of Rs.10/-Crores. However, the applicant got the said amount reduced to Rs.2,25,00,000/- and also paid the said amount. The applicant thus demanded the balance amount. Eventually, the first informant was coerced to pay a sum of Rs.1,96,77,000/- in cash aggregating to Rs.2,21,99,789/- purportedly towards payment of tax and penalty. The applicant, however, handed over Challans and receipts evidencing deposit of Rs.25,22,789/- only, towards tax and penalty.

7. As the applicant avoided to hand over the documents evidencing the payment of the balance amount towards tax and penalty, the first informant entertained suspicion. The latter allegedly made enquiry with the concerned officers. It transpired

that the applicant had also collected the record of the first informant, which was seized by the concerned officers. Upon being confronted, the applicant denied having collected the record. Hence, the report.

8. Mr. Mohite, learned senior advocate for the applicant invited attention of the Court to an order dated 18th December, 2023 whereby this Court has rejected the application for pre-arrest bail. The learned senior counsel submitted that thereafter the applicant came to be arrested and he is in custody since 9th January, 2024. Investigation is complete. Charge-sheet has been lodged. Therefore, the applicant be enlarged on bail.

9. The learned APP resisted the prayer for bail. It was submitted that the documents which the applicant had received under the receipt (page 61) have not yet been recovered. The applicant being a Chartered Account by profession has abused the trust reposed by the first informant. Therefore, the applicant does not deserve to be enlarged on bail.

10. Mr. Shinde, learned counsel for the first informant, resisted the prayer for bail. It was submitted that the offences were committed by the applicant in connivance with public servants. The investigating agency has not conducted proper investigation Moreover, having regard to the quantum of defrauded amount, the

applicant does not deserve to be released on bail.

11. I have perused the allegations in the FIR. While rejecting the application for pre-arrest bail, this Court had adverted to the nature and gravity of the offences in question. The applicant came to be arrested. Post completion of investigation, a charge-sheet has been lodged.

12. The submission on behalf of the learned APP that the documents have not yet been recovered can not be countenanced at this stage as a ground to oppose the prayer for bail. The offence under section 420 entails punishment which may extend to seven years. Whether the offence punishable under section 409 is made out would be a matter for adjudication at the trial. Since the investigation is complete and charge-sheet has been filed, further detention of the applicant appears unwarranted.

13. The applicant appears to have roots in society and the possibility of fleeing away from justice and tampering with the evidence appears remote.

14. I am, therefore, inclined to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

1] The application stands allowed.

2] The applicant be released on bail in C.R. No. 945 of 2023 registered with Barshi police station, Solapur on furnishing a P.R. Bond of Rs. 50,000/- with one or more sureties in the like amount.

3] The applicant shall mark his presence at Barshi police station on the first Monday of every alternate month between 11 am to 1 pm for a period of three years or till conclusion of the trial.

4] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

5] The applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

6] The applicant shall surrender his passport to the investigating officer. If the applicant does not hold a passport, then the applicant shall file an affidavit to that effect before the trial Court.

7] The applicant shall regularly attend the proceedings before the jurisdictional Court.

8] By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N. J. JAMADAR, J.)